



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

REAL ESTATE STATUTES

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TITLE 61, CHAPTER 2
DIVISION OF REAL ESTATE

61-2-1. License required.

(1) It is unlawful for any person to engage in the business, act in the capacity of, advertise, or assume to act as a principal real estate broker, associate real estate broker, or a real estate sales agent within this state without a license obtained under this chapter.

(2) It is unlawful for any person outside the state to engage in the business, act in the capacity of, advertise, or assume to act as a principal real estate broker, associate real estate broker, or a real estate sales agent with respect to real estate located within the state without a license obtained under this chapter.

61-2-2. Definitions.

As used in this chapter:

(1) "Associate real estate broker" and "associate broker" means any person employed or engaged as an independent contractor by or on behalf of a licensed principal real estate broker to perform any act set out in Subsection (12) for valuable consideration, who has qualified under this chapter as a principal real estate broker.

(2) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(3) "Commission" means the Real Estate Commission established under this chapter.

(4) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.

(5) "Condominium" or "condominium unit" is as defined in Section 57-8-3.

(6) "Condominium homeowners' association" means all of the condominium unit owners acting as a group in accordance with declarations and bylaws.

(7) (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.

(b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.

(8) "Director" means the director of the Division of Real Estate.

(9) "Division" means the Division of Real Estate.

- (10) "Executive director" means the director of the Department of Commerce.
- (11) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.
- (12) "Principal real estate broker" and "principal broker" means any person:
- (a) (i) who sells or lists for sale, buys, exchanges, or auctions real estate, options on real estate, or improvements on real estate with the expectation of receiving valuable consideration; or
 - (ii) who advertises, offers, attempts, or otherwise holds himself out to be engaged in the business described in Subsection (12)(a)(i);
 - (b) employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate who performs any of the acts described in Subsection (12)(a), whether the person's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;
 - (c) who, with the expectation of receiving valuable consideration, manages property owned by another person or who advertises or otherwise holds himself out to be engaged in property management;
 - (d) who, with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of the transactions listed in Subsections (12)(a) and (c); and
 - (e) except for mortgage lenders, title insurance agents, and their employees, who assists or directs in the closing of any real estate transaction with the expectation of receiving valuable consideration.
- (13)(a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of property owned by another person or advertising or otherwise claiming to be engaged in property management by:
- (i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;
 - (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or
 - (iii) authorizing expenditures for repairs to the real estate.
- (b) "Property management" does not include:
- (i) hotel or motel management;
 - (ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for any period of less than 30 consecutive days, and the management activities associated with these rentals; or
 - (iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.
- (14) "Real estate" includes leaseholds and business opportunities involving real property.

- (15) "Real estate sales agent" and "sales agent" mean any person affiliated with a licensed principal real estate broker, either as an independent contractor or an employee as provided in Section 61-2-25, to perform for valuable consideration any act set out in Subsection (12).
- (16)(a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.
- (b) "Regular salaried employee" does not include a person who performs services on a project-by-project basis or on a commission basis.
- (17) "Reinstatement" means restoring a license that has expired or has been suspended.
- (18) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.
- (19) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.
- (20)(a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is a:
- (i) tenancy in common; or
 - (ii) any other legal form of undivided estate in real property including:
 - (A) a fee estate;
 - (B) a life estate; or
 - (C) other long-term estate.
- (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

61-2-3. Exempt persons and transactions.

- (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:
- (i) any person who as owner or lessor performs the acts described in Subsection 61-2-2(12) with reference to property owned or leased by that person;
 - (ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs the acts enumerated in Subsections 61-2-2(12)(a) and (b);
 - (iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage property for one employer;
 - (iv) a person who performs property management services for the apartments at which that person resides in exchange for free or reduced rent on that person's apartment;
 - (v) a regular salaried employee of a condominium homeowners' association who manages real property subject to the declaration of condominium that established the homeowners' association, except that the employee may only manage property for one condominium homeowners' association; and
 - (vi) a regular salaried employee of a licensed property management company who

- performs support services, as prescribed by rule, for the property management company.
- (b) Subsection (1)(a) does not exempt from licensing:
 - (i) employees engaged in the sale of properties regulated under:
 - (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and
 - (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
 - (ii) employees engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or
 - (iii) any person whose interest as an owner or lessor was obtained by that person or transferred to that person for the purpose of evading the application of this chapter, and not for any other legitimate business reason.
- (2) A license under this chapter is not required for:
- (a) isolated transactions by persons holding a duly executed power of attorney from the owner;
 - (b) services rendered by an attorney at law in performing the attorney at law's duties as an attorney at law;
 - (c) a receiver, trustee in bankruptcy, administrator, executor, or any person acting under order of any court;
 - (d) a trustee or its employees under a deed of trust or a will; or
 - (e) any public utility, its officers, or regular salaried employees, unless performance of any of the acts set out in Subsection 61-2-2(12) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility.
- (3) A license under this chapter is not required for any person registered to act as a broker-dealer, agent, or investment advisor under the Utah and federal securities laws in the sale or the offer for sale of real estate if:
- (a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and
 - (ii) the security is registered for sale:
 - (A) pursuant to the Securities Act of 1933; or
 - (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or
 - (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and
 - (ii) the selling agent and the purchaser are not residents of this state.

61-2-4. One act for compensation qualifies person as broker or sales agent.

Except as provided in Section 61-2-3, one act, for valuable consideration, of buying, selling, leasing, managing, or exchanging real estate for another, or of offering for another to buy, sell, lease, manage, or exchange real estate, requires the person performing, offering, or attempting to perform the act to be licensed as a principal real estate broker, an associate real estate broker, or a real estate sales agent as set forth in this chapter.

61-2-5. Division of Real Estate created -- Functions -- Director appointed -- Functions.

(1) There is created within the Department of Commerce a Division of Real Estate. It is responsible for the administration and enforcement of:

- (a) this chapter;
- (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- (e) Chapter 2a, Real Estate Education, Research, and Recovery Fund;
- (f) Chapter 2b, Real Estate Appraiser Licensing and Certification Act; and
- (g) Chapter 2c, Utah Residential Mortgage Practices Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds the office of director at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

(4) On or before October 1 of each year, the director shall, in conjunction with the department, report to the governor and the Legislature concerning the division's work for the preceding fiscal year ending June 30.

(5) The director, in conjunction with the executive director, shall prepare and submit to the governor and the Legislature a budget for the fiscal year next following the convening of the Legislature.

61-2-5.1. Procedures -- Adjudicative proceedings.

The Division of Real Estate shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

61-2-5.5. Real Estate Commission created -- Functions -- Appointment -- Qualification and terms of members -- Expenses -- Meetings.

(1) There is created within the division a Real Estate Commission. The commission shall:

- (a) make rules for the administration of this chapter that are not inconsistent with this chapter, including:
 - (i) licensing of:
 - (A) principal brokers;
 - (B) associate brokers;
 - (C) sales agents;

- (D) real estate companies; and
 - (E) branch offices;
 - (ii) prelicensing and postlicensing education curricula;
 - (iii) examination procedures;
 - (iv) the certification and conduct of:
 - (A) real estate schools;
 - (B) course providers; and
 - (C) instructors;
 - (v) proper handling of funds received by real estate licensees;
 - (vi) brokerage office procedures and recordkeeping requirements;
 - (vii) property management;
 - (viii) standards of conduct for real estate licensees; and
 - (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term estate;
 - (b) establish, with the concurrence of the division, all fees as provided in this chapter and Title 61, Chapter 2a, Real Estate Recovery Fund Act;
 - (c) conduct all administrative hearings not delegated by the commission to an administrative law judge or the division relating to the:
 - (i) licensing of any applicant;
 - (ii) conduct of any licensee; or
 - (iii) the certification or conduct of any real estate school, course provider, or instructor regulated under this chapter;
 - (d) with the concurrence of the director, impose sanctions against licensees and certificate holders as provided in Section 61-2-11;
 - (e) advise the director on the administration and enforcement of any matters affecting the division and the real estate sales and property management industries;
 - (f) advise the director on matters affecting the division budget;
 - (g) advise and assist the director in conducting real estate seminars; and
 - (h) perform other duties as provided by:
 - (i) this chapter; and
 - (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.
- (2) (a) The commission shall be comprised of five members appointed by the governor and approved by the Senate.
- (b) Four of the commission members shall:
- (i) have at least five years' experience in the real estate business; and
 - (ii) hold an active principal broker, associate broker, or sales agent license.
- (c) One commission member shall be a member of the general public.
- (d) No more than one commission member may be appointed from any given county in the state.
- (3) (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) Upon the expiration of the term of a member of the commission, the member of the commission shall continue to hold office until a successor is appointed and qualified.

(d) A commission member may not serve more than two consecutive terms.

(e) Members of the commission shall annually select one member to serve as chair.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) A member shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

(6) (a) The commission shall meet at least monthly.

(b) The director may call additional meetings:

(i) at the director's discretion;

(ii) upon the request of the chair; or

(iii) upon the written request of three or more commission members.

(7) Three members of the commission constitute a quorum for the transaction of business.

61-2-6. Licensing procedures and requirements.

(1) (a) Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of applicants for:

(i) a principal broker license;

(ii) an associate broker license; or

(iii) a sales agent license.

(b) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.

(c) (i) The division, with the concurrence of the commission, shall require an applicant for:

(A) a sales agent license to complete an approved educational program not to exceed 90 hours; and

(B) an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours.

(ii) The hours required by this section mean 50 minutes of instruction in each 60 minutes.

(iii) The maximum number of program hours available to an individual is ten hours per day.

- (d) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:
 - (i) the fundamentals of:
 - (A) the English language;
 - (B) arithmetic;
 - (C) bookkeeping; and
 - (D) real estate principles and practices;
 - (ii) the provisions of this chapter;
 - (iii) the rules established by the commission; and
 - (iv) any other aspect of Utah real estate license law considered appropriate.
 - (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state.
 - (ii) The commission shall establish by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.
- (2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.
 - (b) The division shall require an applicant to provide the applicant's Social Security number, which is a private record under Subsection 63-2-302(1)(h).
- (3) (a) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency.
 - (b) A nonresident associate broker or sales agent may become licensed in this state by:
 - (i) conforming to all the provisions of this chapter except that of residency; and
 - (ii) being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.
- (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), an applicant who has had a real estate license revoked:
 - (i) shall be relicensed as prescribed for an original application; and
 - (ii) may not apply for a new license until at least five years after the day on which the license is revoked.
 - (b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of a real estate license.
- (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division the authority to:
 - (i) review a class or category of applications for initial or renewed licenses;
 - (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

- (iii) approve or deny a license application without concurrence by the commission.
- (b) (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for review of the denial of licensure.
- (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

61-2-7. Form of license -- Display of license.

The division shall issue to each licensee a wall license showing the name and address of the licensee. The seal of the state shall be affixed to each license. Each license shall contain any other matter prescribed by the division and shall be delivered or mailed to the address furnished by the licensee. The wall licenses of principal brokers, associate brokers, and sales agents who are affiliated with an office shall be kept in the office to be made available on request.

61-2-7.1. Change of information -- Failure to notify -- Notification to an applicant, licensee, or certificate holder.

- (1) An applicant, licensee, or certificate holder shall send the division a signed statement in the form required by the division notifying the division within ten business days of any change of:
 - (a) principal broker;
 - (b) principal business location;
 - (c) mailing address;
 - (d) home street address;
 - (e) an individual's name; or
 - (f) business name.
- (2) The division may charge a fee established in accordance with Section 63-38-3.2 for processing any notification of change submitted by an applicant, licensee, or certificate holder.
- (3) (a) When providing the division a business location or home street address, a physical location or street address must be provided.
- (b) When providing a mailing address, an applicant, licensee, or certificate holder may provide a post office box or other mail drop location.
- (4) Failure to notify the division of a change described in Subsection (1) is separate grounds for disciplinary action against the applicant, licensee, or certificate holder.
- (5) An applicant, licensee, or certificate holder is considered to have received any notification that has been sent to the last address furnished to the division by the applicant, licensee, or certificate holder.

61-2-7.2. Reporting requirements.

Principal brokers, associate brokers, and sales agents shall send the division a signed statement notifying the division of the following within ten business days:

- (1) conviction of any criminal offense; or
- (2) filing a personal or brokerage bankruptcy.

61-2-8. Discharge of associate broker or sales agent by principal broker -- Notice.

If an associate broker or sales agent is discharged by a principal broker, the principal broker shall, within three days, send the division a signed statement notifying the division of the discharge. The principal broker shall address a communication to the last-known residence address of that associate broker or sales agent advising him that notice of his termination has been delivered or sent to the division. It is unlawful for any associate broker or sales agent to perform any of the acts under this chapter, directly or indirectly, from and after the date of receipt of the termination notice until affiliation with a principal broker has been established.

61-2-9. Examination and license fees -- Background check -- Renewal of licenses -- Education requirements -- Activation of inactive licenses -- Recertification -- Licenses of firm, partnership, or association -- Miscellaneous fees.

- (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent license examination, the applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63-38-3.2 for admission to the examination.
- (b) A principal broker, associate broker, or sales agent applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63-38-3.2 for issuance of an initial license or license renewal.
- (c) Each license issued under this Subsection (1) shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.
- (d) (i) Any new sales agent applicant shall:
 - (A) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and
 - (B) consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.
- (ii) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each new sales agent applicant through the national criminal history system (NCIC) or any successor system.
- (iii) The cost of the background check and the fingerprinting shall be borne by the applicant.
- (iv) Funds paid to the division by an applicant for the cost of the background check shall be nonlapsing.

- (e) (i) Any new sales agent license issued under this section shall be conditional, pending completion of the criminal background check. If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.
 - (ii) Any person whose conditional license has been revoked under Subsection (1)(e)(i) shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
 - (iii) The division director shall designate one of the following to act as the presiding officer in a post-revocation hearing described in this Subsection (1)(e):
 - (A) the division; or
 - (B) the division with the concurrence of the commission.
 - (iv) The decision on whether relief from the revocation of a license under this Subsection (1)(e) will be granted shall be made by the presiding officer.
 - (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:
 - (A) the criminal history upon which the division based the revocation:
 - (I) did not occur; or
 - (II) is the criminal history of another person;
 - (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and
 - (II) the applicant had a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or
 - (C) the division failed to follow the prescribed procedure for the revocation.
 - (vi) If a revocation under this Subsection (1)(e) is upheld after a post-revocation hearing, the person may not apply for a new license until at least 12 months after the day on which the final decision upholding the revocation is issued.
- (2) (a) (i) A license expires if it is not renewed on or before its expiration date.
 - (ii) As a condition of renewal, each active licensee shall demonstrate competence:
 - (A) by viewing an approved real estate education video program and completing a supplementary workbook; or
 - (B) by completing 12 hours of professional education approved by the division and commission within each two-year renewal period.
 - (iii) The division with the concurrence of the commission shall certify education which may include:
 - (A) state conventions;
 - (B) home study courses;
 - (C) video courses; and
 - (D) closed circuit television courses.
 - (iv) The commission with concurrence of the division may exempt a licensee from the education requirement of this Subsection (2)(a) for a period not to exceed four years:
 - (A) upon a finding of reasonable cause, including military service; and
 - (B) under conditions established by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

- (b) For a period of 30 days after the expiration date of a license, the license may be reinstated upon:
 - (i) payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63-38-3.2; and
 - (ii) providing proof acceptable to the division and the commission of the licensee having completed the hours of education or demonstrated competence as required under Subsection (2)(a).
 - (c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, the license may be reinstated by:
 - (i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63-38-3.2;
 - (ii) providing to the division proof of satisfactory completion of 12 hours of continuing education:
 - (A) in addition to the requirements for a timely renewal; and
 - (B) on a subject determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
 - (iii) providing proof acceptable to the division and the commission of the licensee having:
 - (A) completed the hours of education; or
 - (B) demonstrated competence as required under Subsection (2)(a).
 - (d) A person who does not renew that person's license within six months after the expiration date shall be relicensed as prescribed for an original application.
- (3) (a) As a condition for the activation of an inactive license that was in an inactive status at the time of the licensee's most recent renewal, the licensee shall supply the division with proof of:
- (i) successful completion of the respective sales agent or broker licensing examination within six months prior to applying to activate the license; or
 - (ii) the successful completion of 12 hours of continuing education that the licensee would have been required to complete under Subsection (2)(a) if the license had been on active status at the time of the licensee's most recent renewal.
- (b) The commission may, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establish by rule:
- (i) the nature or type of continuing education required for reactivation of a license; and
 - (ii) how long prior to reactivation the continuing education must have been completed.
- (4) (a) A principal broker license may be granted to a corporation, partnership, or association if the corporation, partnership, or association has affiliated with it an individual who:
- (i) has qualified as a principal broker under the terms of this chapter; and
 - (ii) serves in the capacity of a principal broker.
- (b) Application for the license described in Subsection (4)(a) shall be made in accordance with the rules adopted by the division with the concurrence of the commission.
- (5) The division may charge and collect reasonable fees determined by the commission with the

concurrence of the division under Section 63-38-3.2 to cover the costs for:

- (a) issuance of a new or duplicate license;
- (b) license histories or certifications;
- (c) certified copies of official documents, orders, and other papers and transcripts;
- (d) certifying real estate schools, courses, and instructors, the fees for which shall, notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and Recovery Fund; and
- (e) other duties required by this chapter.

(6) If a licensee submits or causes to be submitted a check, draft, or other negotiable instrument to the division for payment of fees, and the check, draft, or other negotiable instrument is dishonored, the transaction for which the payment was submitted is void and will be reversed by the division if payment of the applicable fee is not received in full.

(7) (a) The fees under this chapter and the additional license fee for the Real Estate Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license fees or assessments that might otherwise be imposed or charged by the state or any of its political subdivisions, upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee on a principal broker if the principal broker maintains a place of business within the jurisdiction of the political subdivision.

(b) Unless otherwise exempt, each licensee under this chapter is subject to all taxes imposed under Title 59, Revenue and Taxation.

**61-2-10. Restriction on commissions -- Affiliation with more than one broker --
Specialized licenses -- Designation of agents or brokers.**

(1) It is unlawful for any associate broker or sales agent to accept valuable consideration for the performance of any of the acts specified in this chapter from any person except the principal broker with whom he is affiliated and licensed.

(2) An inactive associate broker or sales agent is not authorized to conduct real estate transactions until the inactive associate broker or sales agent becomes affiliated with a licensed principal broker and submits the required documentation to the division. An inactive principal broker is not authorized to conduct real estate transactions until the principal broker's license is activated with the division.

(3) No sales agent or associate broker may affiliate with more than one principal broker at the same time.

(4) (a) Except as provided by rule, a principal broker may not be responsible for more than one real estate brokerage at the same time.

(b) In addition to issuing principal broker, associate broker, and sales agent licenses authorizing the performance of all of the acts set forth in Subsection 61-2-2(12), the

division may issue specialized sales licenses and specialized property management licenses with the scope of practice limited to the specialty. An individual may hold a specialized license in addition to a license to act as a principal broker, an associate broker, or a sales agent. The commission may adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Procedures Act, for the administration of this provision, including preclicensing and postlicensing education requirements, examination requirements, affiliation with real estate brokerages or property management companies, and other licensing procedures.

(c) An individual may not be a principal broker of a brokerage and a sales agent or associate broker for a different brokerage at the same time.

(5) Any owner, purchaser, lessor, or lessee who engages the services of a principal broker may designate which sales agents or associate brokers affiliated with that principal broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or exchange of real estate, or in exercising an option relating to real estate.

61-2-11. Investigations -- Subpoena power of division -- Grounds for disciplinary action.

The division may investigate or cause to be investigated the actions of any principal broker, associate broker, sales agent, real estate school, course provider, or school instructor licensed or certified by this state, or of any applicant for licensure or certification, or of any person who acts in any of those capacities within this state. The division is empowered to subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information considered relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond to a subpoena is considered as a separate violation of this chapter. The commission, with the concurrence of the director, may impose a civil penalty in an amount not to exceed \$2,500 per violation, impose educational requirements, and suspend, revoke, place on probation, or deny renewal, reinstatement, or reissuance of any license or any certification if at any time the licensee or certificate holder, whether acting as an agent or on his own account, is found guilty of:

- (1) making any substantial misrepresentation;
- (2) making any false promises of a character likely to influence, persuade, or induce;
- (3) pursuing a continued and flagrant course of misrepresentation, or of making false promises through agents, sales agents, advertising, or otherwise;
- (4) acting for more than one party in a transaction without the informed consent of all parties;
- (5) (a) acting as an associate broker or sales agent while not licensed with a licensed principal broker;
(b) representing or attempting to represent a broker other than the principal broker with whom the person is affiliated; or

- (c) representing as sales agent or having a contractual relationship similar to that of sales agent with other than a licensed principal broker;
- (6) (a) failing, within a reasonable time, to account for or to remit any monies coming into the person's possession that belong to others;
 - (b) commingling the funds described in Subsection (6)(a) with the person's own; or
 - (c) diverting the funds described in Subsection (6)(a) from the purpose for which they were received;
- (7) paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared:
 - (a) with a licensed principal broker of another jurisdiction; or
 - (b) as provided under:
 - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
 - (ii) Title 16, Chapter 11, Professional Corporation Act; or
 - (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
- (8) being unworthy or incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;
- (9) failing to voluntarily furnish copies of all documents to all parties executing the documents;
- (10) failing to keep and make available for inspection by the division a record of each transaction, including:

- (a) the names of buyers and sellers or lessees and lessors;
- (b) the identification of the property;
- (c) the sale or rental price;
- (d) any monies received in trust;
- (e) any agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;

(11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether the purchase, sale, or rental is made for himself or for an undisclosed principal;

(12) regardless of whether the crime was related to real estate, being convicted of a criminal offense involving moral turpitude within five years of the most recent application, including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a criminal offense involving moral turpitude;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensees and any unlicensed staff;

(15) violating or disregarding this chapter, an order of the commission, or the rules adopted by the commission and the division;

(16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

(17) any other conduct which constitutes dishonest dealing;

(18) unprofessional conduct as defined by statute or rule; or

(19) suspension, revocation, surrender, or cancellation of a real estate license issued by another jurisdiction, or of another professional license issued by this or another jurisdiction, based on misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness.

61-2-11.5. Investigations related to an undivided fractionalized long-term estate.
In addition to any action authorized by Section 61-2-11, in relationship to the offer or sale of an undivided fractionalized long-term estate:

(1) the division may make any public or private investigation within or outside of this state as the division considers necessary to determine whether any person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter;

(2) to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit any person to file a statement in writing, under oath or otherwise as to all facts and circumstances concerning the matter to be investigated; and

(3) for the purpose of the investigation described in Subsection (1), the division or any employee designated by the division may:

- (a) administer oaths and affirmation; or
- (b) take any action permitted by Section 61-2-11 including:
 - (i) subpoena witnesses and compel their attendance;
 - (ii) take evidence; and
 - (iii) require the production of any books, papers, correspondence, memoranda, agreement, or other documents or records relevant or material to the investigation.

61-2-12. Disciplinary action -- Judicial review.

(1) (a) On the basis of a violation of Section 61-2-11, the division shall give notice to the licensee or certificate holder and commence an adjudicative proceeding before:

- (i) imposing an educational requirement;
- (ii) imposing a civil penalty; or
- (iii) taking any of the following actions related to a license or certificate:
 - (A) revoking;
 - (B) suspending;
 - (C) placing on probation; or
 - (D) denying the renewal, reinstatement, or reissuance.

(b) If the licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.

(c) If the presiding officer at a hearing determines that any licensee or certificate holder is guilty of a violation of this chapter, the division by written order may:

- (i) with regard to the license or certificate:
 - (A) suspend;
 - (B) revoke;
 - (C) place on probation; or
 - (D) deny renewal, reinstatement, or reissuance; or
- (ii) impose a civil penalty.

(2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.

(b) If the applicant, certificate holder, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(c) (i) An order, ruling, or decision of the division shall take effect and become operative 30

days after the service of the order, ruling, or decision unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63-46b-18.

(iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in all adjudicative proceedings.

61-2-13. Grounds for revocation of principal broker's license -- Automatic inactivation of affiliated associate brokers and sales agents licenses.

(1) Any unlawful act or any violation of this chapter committed by any real estate sales agent or associate broker employed or engaged as an independent contractor by or on behalf of a licensed principal broker or committed by any employee, officer, or member of a licensed principal broker is cause for the revocation, suspension, or probation of the principal broker's license, or for the imposition of a fine against the principal broker in an amount not to exceed \$500 per violation.

(2) The revocation or suspension of a principal broker license automatically inactivates every associate broker or sales agent license granted to those persons by reason of their affiliation with the principal broker whose license was revoked or suspended, pending a change of broker affiliation. A principal broker shall, prior to the effective date of the suspension or revocation of his license, notify in writing every licensee affiliated with him of the revocation or suspension of his license.

61-2-13.5. Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

61-2-14. List of licensees to be available.

The division shall make available at reasonable cost a list of the names and addresses of all persons licensed by it under this chapter.

61-2-15. Repealed.

61-2-16. Repealed.

61-2-17. Penalty for violation of chapter.

(1) Any individual violating this chapter, in addition to being subject to a license sanction or a fine ordered by the commission, is, upon conviction of a first violation, guilty of a class A

misdemeanor. Any imprisonment shall be for a term not to exceed six months. If the violator is a corporation, it is, upon conviction of a first violation, guilty of a class A misdemeanor.

(2) Upon conviction of a second or subsequent violation, an individual is guilty of a third degree felony. Imprisonment shall be for a term not to exceed two years. If a corporation is convicted of a second or subsequent violation, it is guilty of a third degree felony.

(3) Any officer or agent of a corporation, or any member or agent of a partnership or association, who personally participates in or is an accessory to any violation of this chapter by such corporation, partnership, or association, is subject to the penalties prescribed for individuals.

(4) If any person receives any money or its equivalent, as commission, compensation, or profit by or in consequence of a violation of this chapter, that person is liable for an additional penalty of not less than the amount of the money received and not more than three times the amount of money received, as may be determined by the court. This penalty may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved for his own use and benefit.

(5) All fines imposed by the commission and the director under this chapter shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and Recovery Fund to be used in a manner consistent with the requirements of the Real Estate Recovery Fund Act.

61-2-18. Actions for recovery of compensation restricted.

(1) No person may bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation for any act done or service rendered which is prohibited under this chapter to other than licensed principal brokers, unless the person was duly licensed as a principal broker at the time of the doing of the act or rendering the service.

(2) No sales agent or associate broker may sue in his own name for the recovery of a fee, commission, or compensation for services as a sales agent or associate broker unless the action is against the principal broker with whom he is or was licensed. Any action for the recovery of a fee, commission, or other compensation may only be instituted and brought by the principal broker with whom the sales agent or associate broker is affiliated.

61-2-19. Repealed.

61-2-20. Rights and privileges of real estate licensees.

Real estate licensees may fill out only those legal forms approved by the commission and the attorney general, and those forms provided by statute, with the following exceptions:

(1) Principal brokers and associate brokers may fill out any documents associated with the closing of a real estate transaction.

(2) Real estate licensees may fill out real estate forms prepared by legal counsel of the buyer, seller, lessor, or lessee.

(3) If the commission and the attorney general have not approved a specific form for the transaction, principal brokers, associate brokers, and sales agents may fill out real estate forms prepared by any legal counsel, including legal counsel retained by the brokerage to develop these forms.

61-2-21. Remedies and action for violations.

(1) (a) If the director has reason to believe that any person has been, is engaging in, or is about to engage in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop such acts, the director shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, any cease and desist order shall remain in effect.

(d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) After the hearing, if the commission and the director agree that the acts of the person violate this chapter, the director:

(i) shall issue an order making the order issued under Subsection (1) permanent; and

(ii) may impose a fine.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, the director shall file suit in the name of the Department of Commerce and the Division of Real Estate, in the district court in the county in which the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(c) The district courts of this state shall have jurisdiction of these suits.

(d) Upon a proper showing in an action brought under this section related to an undivided fractionalized long-term estate, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

(iv) appoint a receiver or conservator for the defendant or the defendant's assets;

(v) order disgorgement;

(vi) order rescission;

(vii) impose a fine of not more than \$500 for each violation of this chapter; and

(viii) enter any other relief the court considers just.

(e) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) The remedies and action provided in this section may not interfere with, or prevent the prosecution of, any other remedies or actions including criminal proceedings.

61-2-22. Separability.

If any provision of this chapter, or the application of any provision to any person or circumstance, is held invalid, the remainder of this chapter shall not be affected thereby.

61-2-23. Repealed.

61-2-24. Mishandling of trust funds.

(1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust funds under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of funds, the division, with the concurrence of the commission, may order a complete audit of the account by a certified public accountant at the licensee's expense, or take other action in accordance with Section 61-2-12.

(2) The licensee may obtain agency review by the executive director or judicial review of any division order.

(3) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust funds, the division, with or without prior administrative proceedings, may bring an action in the district court of the district where the person resides or maintains a place of business, or where the act or practice occurred or is about to occur, to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, the court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The division is not required to post a bond in any court proceeding.

61-2-25. Sales agents -- Affiliated with broker as independent contractors or employees -- Presumption.

A sales agent may be affiliated with a licensed principal real estate broker either as an independent contractor or as an employee. The relationship between sales agent and broker is presumed to be an independent contractor relationship unless there is clear and convincing evidence that the relationship was intended by the parties to be an employer employee relationship.

61-2-26. Rulemaking required for offer or sale of an undivided fractionalized long-term estate -- Disclosures -- Management agreement.

(1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an undivided

fractionalized long-term estate shall comply with the disclosure requirements imposed by rules made by the commission under this section.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules as to the timing, form, and substance of disclosures required to be made by a licensee or certificate holder under this section.

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules imposing requirements for a management agreement related to an undivided fractionalized long-term estate that makes the offer or sale of the undivided fractionalized long-term estate treated as a real estate transaction and not treated as an offer or sale of a security under Chapter 1, Utah Uniform Securities Act.

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules establishing:

- (a) the disclosures required in the sale or offer of an undivided fractionalized long-term estate that is subject to a master lease;
- (b) requirements for the management of a master lease on an undivided fractionalized long-term estate; and
- (c) the requirements on the structure of a master lease on an undivided fractionalized long-term estate.

61-2-27. Exclusive brokerage agreement.

(1) As used in this section:

- (a) "Client" means a person who makes an exclusive brokerage agreement with a principal broker under Subsection (1)(c).
- (b) "Closed" means that:
 - (i) all documents required to be executed under the contract are executed;
 - (ii) all monies required to be paid by either party under the contract are paid in the form of collected or cleared funds;
 - (iii) the proceeds of any new loan are delivered by the lender to the seller; and
 - (iv) all applicable documents are recorded in the office of the county recorder for the county in which the property is located.
- (c) "Exclusive brokerage agreement" means a written agreement between a client and a principal broker:
 - (i) (A) to list for sale, lease, or exchange:
 - (I) real estate;
 - (II) an option on real estate; or
 - (III) an improvement on real estate; or
 - (B) for representation in the purchase, lease, or exchange of:
 - (I) real estate;
 - (II) an option on real estate; or
 - (III) an improvement on real estate;
 - (ii) that gives the principal broker the sole right to act as the agent or representative of

the client for the purchase, sale, lease, or exchange of:

- (A) real estate;
- (B) an option on real estate; or
- (C) an improvement on real estate; and
- (iii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.

(2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:

- (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's property;
- (ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and
- (iii) answer any question the client has concerning:
 - (A) an offer;
 - (B) a counteroffer;
 - (C) a notice; and
 - (D) a contingency.

(b) A principal broker subject to an exclusive brokerage agreement need not comply with Subsection (2)(a) after:

- (i) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is:
 - (A) signed;
 - (B) all contingencies related to the sale, lease, or exchange are satisfied or waived; and
 - (C) the sale, lease, or exchange is closed; or
- (ii) the exclusive brokerage agreement expires or terminates.

(3) A principal broker who violates this section is subject to Section 61-2-17.

TITLE 61, CHAPTER 2a REAL ESTATE RECOVERY FUND

61-2a-1. Citation.

This act shall be known and may be cited as the "Real Estate Recovery Fund Act."

61-2a-2. Purpose.

The purposes of this chapter are as follows:

- (1) To establish a Real Estate Education, Research, and Recovery Fund that shall reimburse the public out of the fund for damages up to \$10,000 caused by real estate licensees in a real estate transaction. This chapter applies to damages caused by individual licensees. Reimbursement may not be made for judgments against corporations, partnerships, associations, or other legal entities.
- (2) To provide revenue for improving the real estate profession through education and research with the goal of making real estate salesmen more responsible to the public.

61-2a-3. Education, Research, and Recovery Fund.

There is created a restricted special revenue fund to be known as the "Real Estate Education, Research, and Recovery Fund." The actual interest earned on the Real Estate Education, Research, and Recovery Fund shall be deposited into the fund. At the commencement of each fiscal year, \$100,000 shall be available in the fund for satisfying judgments rendered against persons licensed under Title 61, Chapter 2, Division of Real Estate.

61-2a-4. Additional license fee -- Purpose.

- (1) Each person who applies for or renews a real estate principal broker or associate broker license shall pay, in addition to the application or renewal fee, a reasonable annual fee of up to \$18, as determined by the Division of Real Estate with the concurrence of the Real Estate Commission.
- (2) Each person who applies for or renews a real estate sales agent license shall pay in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined by the division with the concurrence of the commission.
- (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid into the Real Estate Education, Research, and Recovery Fund to be used for the purposes of this chapter.

61-2a-5. Notice to division -- Judgment against real estate licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.

- (1) A person may bring a claim against the Real Estate Education, Research, and Recovery Fund only if he sends a signed notification to the Division of Real Estate at the time he files an action against a real estate licensee alleging fraud, misrepresentation, or deceit. Within 30 days of

receipt of the notice, the division shall have an unconditional right to intervene in the action. If the person making a claim against the fund obtains a final judgment in a court of competent jurisdiction in this state against the licensee based upon fraud, misrepresentation, or deceit in any real estate transaction, the person making the claim may, upon termination of all proceedings including appeals, file a verified petition in the court where the judgment was entered for an order directing payment from the Real Estate Education, Research, and Recovery Fund for the uncollected actual damages included in the judgment and unpaid. Recovery from the fund may not include punitive damages, attorney's fees, interest, or court costs. Regardless of the number of claimants or parcels of real estate involved in a transaction, the liability of the fund may not exceed \$10,000 for a single transaction and \$50,000 for any one licensee.

(2) A copy of the petition shall be served upon the Division of Real Estate of the Department of Commerce, and an affidavit of the service shall be filed with the court.

(3) The court shall conduct a hearing on the petition within 30 days after service. The petitioner shall recover from the fund only if he shows all of the following:

- (a) He is not the spouse of the judgment debtor or the personal representative of the spouse.
- (b) He has complied with this chapter.
- (c) He has obtained a final judgment in the manner prescribed under this section, indicating the amount of the judgment awarded.
- (d) He has proved the amount still owing on the judgment at the date of the petition.
- (e) He has had a writ of execution issued upon the judgment, and the officer executing the writ has made a return showing that no property subject to execution in satisfaction of the judgment could be found. If execution is levied against the property of the judgment debtor, the petitioner shall show that the amount realized was insufficient to satisfy the judgment, and shall indicate the amount realized and the balance remaining on the judgment after application of the amount realized.
- (f) He has made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment, and he has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the petitioner satisfies the court that it is not practicable for him to comply with one or more of the requirements enumerated in Subsections (3)(e) and (f), the court may waive those requirements.

(5) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy. In the case of a bankruptcy proceeding that is still open or that is commenced during the pendency of the claim, the claimant shall obtain an order from the bankruptcy court declaring the judgment and debt to be nondischargeable.

61-2a-6. Real Estate Division -- Authority to act upon receipt of petition.

(1) Upon receipt of a petition as required by Section 61-2a-5, the Real Estate Division may answer, initiate review proceedings of its own, or appear in any proceeding in the name of the defendant to the action or on behalf of the fund.

(2) The division may, subject to court approval, compromise a claim based upon the application of a petitioner.

61-2a-7. Court determination and order.

If the court determines that a claim should be levied against that portion of the fund allocated for the purpose of carrying out the provisions of this act, the court shall enter an order directed to the division requiring payment from the fund of that portion of the petitioner's judgment that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-2a-5.

61-2a-8. Insufficient funds to satisfy judgments -- Procedure and interest.

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy any authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of 8% per annum.

61-2a-9. Division subrogated to judgment creditor -- Authority to revoke license.

If the division makes payment from the fund to a judgment creditor, the division shall be subrogated to all the rights of the judgment creditor for the amounts paid out of the fund and any amount and interest recovered by the division shall be deposited in the fund. The license of any real estate licensee for whom payment from the fund is made under this chapter shall be automatically revoked. The licensee may not apply for a new license until the amount paid out on his account, plus interest at a rate determined by the Division of Real Estate with the concurrence of the commission, has been repaid in full.

61-2a-10. Failure to comply with all provisions constitutes a waiver.

The failure of any person to comply with the provisions of this chapter shall constitute a waiver of any rights provided under it.

61-2a-11. Director of Department of Commerce -- Authority to take disciplinary action not limited.

Nothing contained in this chapter shall limit the authority of the director of the Department of Commerce to take disciplinary action against a licensee for a violation of any of the provisions of Title 61, Chapter 2, or of the rules and regulations of the Division of Real Estate. The repayment in full of all obligations to the fund by any licensee does not nullify or modify the

effect of any other disciplinary proceeding brought pursuant to the provisions of Title 61, Chapter 2, or the rules and regulations promulgated by the commission.

61-2a-12. Moneys accumulated -- Excess set aside -- Purpose.

Any of the money accumulated in the Real Estate Education, Research and Recovery Fund in excess of \$100,000 shall be set aside and segregated to be used by the Real Estate Division in carrying out the advancement of education and research in the field of real estate, including courses sponsored by the division, offered by the division in conjunction with any university or college in the state, or provided for by contracting for a particular research project in the field of real estate for the state.

TITLE 57, CHAPTER 11 LAND SALES PRACTICE

57-11-1. Short title.

This act shall be known and may be cited as the "Utah Uniform Land Sales Practices Act."

57-11-2. Definitions.

As used in this chapter:

(1) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit. It does not include the sale or lease of land held by railroads for right of way if the land is within 400 feet of the center line of any railroad tract.

(2) "Federal act" means the federal Interstate Land Sales Full Disclosure Act (15 U.S.C., Sec. 1701, et seq.) or any successor federal act.

(3) "Industrial park" means any subdivision or subdivided lands offered as a part of a common promotional plan of advertising and sale zoned for office, manufacturing, warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or more of those purposes. It does not include any land offered for sale which is designed or intended to be used for recreational, residential, including multiple family dwellings, or agricultural purposes.

(4) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(5) "Person" includes a business trust, estate, trust, partnership, unincorporated association, two or more of any entity having a joint or common interest, or any other legal or commercial entity.

(6) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(7) "Residential building" means any structure intended for occupation as a residence which, at the time of an offer or disposition of the unit on which it is situated, or on which there is a legal obligation on the part of the seller to complete construction of it within two years from date of disposition, has, or if completed would have, ready access to water, gas, electricity, and roads.

(8) "Subdivider" means the owner of any interest in subdivided lands who offers them for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" means land which is divided or is proposed to be divided for the purpose of disposition into ten or more units including land, whether contiguous

or not, if ten or more units are offered as a part of a common promotional plan of advertising and sale. If a subdivision is offered by a developer or group of developers, and the land is contiguous or is known, designated, or advertised as a common tract or by a common name, that land is presumed, without regard to the number of units covered by each individual offering, to be part of a common promotional plan.

(10) "Unit" includes any lot, parcel, or other interest in land separately offered for disposition.

57-11-3. Administration by Division of Real Estate of the Department of Commerce.

This chapter shall be administered by the Division of Real Estate of the Department of Commerce, which hereinafter is referred to as the division.

57-11-3.5. Procedures -- Adjudicative proceedings.

The Division of Real Estate shall comply with the procedures and requirements of Title 63, Chapter 46b, in its adjudicative proceedings.

57-11-4. Exemptions.

(1) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the federal act, this chapter does not apply to offers or dispositions of an interest in land:

- (a) by a purchaser of subdivided lands for his own account in a single or isolated transaction;
- (b) on each unit of which there is a residential, commercial, or industrial building, or on each unit of which there is a legal obligation on the part of the seller to complete construction of such a building within two years from date of disposition;
- (c) to any person who acquires that interest for use in the business of constructing residential, commercial, or industrial buildings, or to any person who acquires that type of land for the purpose of disposition to a person engaged in that business, unless the person who acquires land for these purposes sells that land to individuals as unimproved lots with no legal obligation on the part of the seller to construct a residential, commercial, or industrial building on that lot within two years from the date of disposition;
- (d) pursuant to court order;
- (e) by any government or government agency;
- (f) if at the time of the offer or disposition the subdivider furnishes satisfactory assurance of completion of the improvements described in Subsections (1)(f)(ii) and (iii) and the interest lies within the boundaries of a city or a county which:
 - i) has a planning and zoning board utilizing or employing at least one professional planner;
 - ii) enacts ordinances that require approval of planning, zoning, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and

- iii) in which the interest in land will have the improvements described in Subsection (1)(f)(ii) plus telephone and electricity;
 - (g) in an industrial park;
 - (h) as cemetery lots; or
 - (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a timeshare development as defined in Section 57-19-2.
- (2) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the provisions of the federal act, the provisions of this chapter, except as specifically designated, do not apply to:
 - (a) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust on real estate;
 - (b) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
 - (c) offers or dispositions of subdivided lands registered under the federal act and which the division finds to be in the public interest to exempt from the registration requirements of this chapter. A subdivider seeking to qualify under this exemption shall file with the division a copy of an effective statement of record filed with the secretary of the Department of Housing and Urban Development together with a filing fee of \$100. In the event the subdivider does not qualify under this exemption, this amount shall be credited to the filing fee required for registration under this chapter. Nothing in this Subsection (2)(c) exempts a subdivider from the provisions of Sections 57-11-16 and 57-11-17 or the requirement to file an annual report with the division under Section 57-11-10;
 - (d) offers or dispositions of securities currently registered with the Securities Division; or
 - (e) offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest in these assets if the offers or dispositions of those interests are regulated as securities by the United States or by the Securities Division.
- (3) a) Notwithstanding the exemptions in Subsections (1) and (2), any person making an offer or disposition of an interest in land which is located in Utah shall apply to the division for an exemption before the offer or disposition is made if:
 - (i) the person is representing, in connection with the offer or disposition, the availability of culinary water service to or on the subdivided land; and
 - (ii) the culinary water service is provided by a water corporation as defined in Section 54-2-1.
- (b) A subdivider seeking to qualify under this exemption shall file with the division an application for exemption together with a filing fee of \$50 and an application containing:
 - i) information required by the division to show that the offer or disposition is exempt under the provisions of this section;
 - (ii) a statement as to what entity will be providing culinary water service and the nature of that entity; and
 - (iii) a copy of the entity's certificate of convenience and necessity issued by the

Public Service Commission, or evidence that the entity providing water service is exempt from the jurisdiction of the Public Service Commission.

(4) The director may by rule or order exempt any person from any requirement of this chapter if the director finds that the offering of an interest in a subdivision is essentially noncommercial. For purposes of this section, the bulk sale of subdivided lands by a subdivider to another person who will become the subdivider of those lands is considered essentially noncommercial.

57-11-5. Registration, public offering statement, and receipt required for sale of subdivided land -- Temporary permit -- Right of rescission.

Unless the subdivided lands or the transaction is exempt under Section 57-11-4, all of the following apply:

(1) No person may offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located outside of this state prior to the time the subdivided lands are registered in accordance with this chapter.

(2) Notwithstanding Subsection (1), the division may grant a temporary permit allowing the developer to begin a sales program while the registration is in process. In order to obtain a temporary permit the developer must:

- (a) submit an application to the division for a temporary permit in the form required by the division;
- (b) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Sections 57-11-6 and 57-11-7 in addition to a temporary permit fee of \$100;
- (c) provide evidence acceptable to the division that all funds received by the developer or marketing agent will be placed into an independent escrow with instructions that funds will not be released until a final registration has been granted;
- (d) give to each purchaser and potential purchaser a copy of the proposed property report which the developer has submitted to the division with the original application; and
- (e) give to each purchaser the opportunity to rescind the purchase in accordance with this section. The purchaser must be granted an additional opportunity to rescind upon the issuance of an approved registration if the division determines that there is a substantial difference in the disclosures contained in the final property report and those given to the purchaser in the proposed property report.

(3) Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by midnight of the fifth calendar day after the execution of the contract or agreement of disposition. This right of rescission may not be waived by agreement. The contract or agreement of disposition shall state in boldface type on the signature page above all signatures: **YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF DISPOSITION BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE SIGNING OF THE**

CONTRACT OR AGREEMENT. WRITTEN NOTICE OF CANCELLATION MUST BE PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, POSTMARKED BY MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT, TO THE SELLER AT: (Address of Seller).

(4) No person may dispose of any interest in subdivided lands without delivering to the purchaser an effective, current public offering statement and obtaining a dated, signed receipt for the public offering statement in a form to be approved by the division from each purchaser. The subdivider shall retain each receipt for two years from the date of its execution. All receipts shall be made available for inspection upon request by the division. Failure to comply with this subsection shall not constitute a cause of action under Section 57-11-17 but shall be grounds for appropriate action by the division under Sections 57-11-13 and 57-11-14.

57-11-6. Application for registration -- Required documents and information -- Filing fee and deposit -- Consolidation of registration of additional lands -- Reports of changes.

(1) The application for registration of subdivided lands shall be filed as prescribed by the division's rules and, unless otherwise provided by the division, shall include, but is not limited to, the following documents and information:

- (a) an irrevocable appointment of the division to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
- (b) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the units, and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;
- (c) the states or jurisdictions, including the United States, in which an application for registration or similar document has been filed, and a copy of any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (d) the applicant's name and address, and the form, date, and jurisdiction of organization; the address of each of its offices in this state; and the name and address of the individual to whom the applicant wishes to have the division direct all communications;
- (e) the name, address, and principal occupation for the past five years of every director, officer, or general partner of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application;
- (f) a statement, in a form acceptable to the division, of the condition of the title to the subdivided lands, including encumbrances, as of a specified date within 30 days of the date of application, which statement:
 - (i) if the subdivided lands are situated in this state, shall be in the form of a title opinion from a title insurer qualified to engage in the title insurance business in this state or an opinion of an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner;
 - (ii) if the subdivided lands are situated in another jurisdiction, shall be in the

form of an opinion of an attorney licensed to practice in the jurisdiction where the lands are situated and who is not a salaried employee, officer, or director of the applicant or owner; or

- (iii) may be substituted by other evidence of title acceptable to the division;
- (g) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (h) copies of the instruments by which the interest in the subdivided lands to be disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with recording data, but if any of these instruments contain any information relating to the consideration paid upon the prior acquisition of the subdivided lands, this information may be blocked out;
- (i) if there is a lien or encumbrance affecting more than one unit, a statement of the consequences to a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
- (j) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;
- (k) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and of any existing or proposed taxes or special assessments which affect the subdivided lands;
- (l) (i) if the subdivided lands are situated in this state, and unless all lands to be disposed of are included on a subdivision plat map which has been filed and approved pursuant to Title 17, an opinion by an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner, that:
 - (A) the division proposed or made does not or will not violate any existing state statute or local ordinance; and
 - (B) all permits or approvals have been obtained from the applicable state or local authorities necessary for the subdivided lands to be put to the use for which they are offered, except for those permits or approvals which will not be granted until the subdivided lands are registered under this chapter if this registration is the only condition precedent to the granting of the permits or approvals; or
- (ii) if the subdivided lands are situated in another jurisdiction, an opinion by an attorney licensed to practice in that jurisdiction and who is not a salaried employee, officer, or director of the applicant or owner, that the division proposed or made does not violate any existing statute, ordinance, or other law;
- (m) a statement of the existing provisions for access, sewage disposal, water (including a supply of culinary water), and other public utilities in the subdivision and, if they are not presently available but are feasible, the estimated cost to the purchaser of their procurement;
- (n) a statement of any improvements to be installed, the schedule for their completion, any provisions for maintenance of those improvements, and estimated costs to the

purchaser;

(o) a statement declaring whether or not the applicant is or will be representing, in connection with an offer or disposition of land, that culinary water service will be available to or on the subdivided lands, and if the applicant is or will be so representing:

(i) a statement as to what entity will be providing the culinary water service and the nature of the entity; and

(ii) if the entity providing the service is not a municipal system, a certificate from the Public Service Commission that the entity providing the culinary water service either holds a certificate of convenience and necessity from the commission, or has been found by the Public Service Commission to be exempt from its jurisdiction;

(p) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(q) the proposed public offering statement;

(r) a copy of every public report or public offering statement or similar document filed with or issued by any agency of the United States or any state or jurisdiction; and

(s) any other reasonable information, including any current financial statement, which the division by its rules requires for the protection of purchasers.

(2) Each application for registration of subdivided lands shall be accompanied by a filing fee of \$500 for up to 30 units, plus an additional \$3 per unit for each unit over 30 units up to a maximum of \$2,500 for each application, and a deposit of \$300 to cover all on-site inspection costs and expenses incurred by the division. If the \$300 deposit is insufficient to meet the estimated costs and expenses of the on-site inspection, the applicant or owner shall make an additional deposit sufficient to cover the estimated costs and expenses before the division will inspect the subdivided lands. The deposit shall be refunded to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

(3) In the event the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdividing lands for disposition under the same promotional plan by filing an application for consolidation accompanied by an additional fee of \$200, plus \$3 for each additional unit, up to a maximum of \$1,250 for each application, if at the time the subdivider makes the application all of the information required by Subsection (1) of this section has been brought current and covers the additional subdivided lands.

(4) The subdivider shall report any material change in the information contained in an application for registration or consolidation within 15 days from the time that change becomes known to him.

57-11-7. Public offering statement -- Contents -- Restrictions on use -- Alteration or amendments.

(1) Every public offering statement shall disclose completely and accurately to prospective purchasers:

- (a) the physical characteristics of the subdivided lands offered; and
- (b) unusual and material circumstances or features affecting the subdivided lands.

(2) The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and, unless otherwise provided by the division, shall include the following:

- (a) the name and principal address of the subdivider and the name and principal address of each officer, director, general partner, other principal, or person occupying a similar status or performing similar functions as defined by the rules of the division if the subdivider is a person other than an individual;
- (b) a general description of the subdivided lands stating the total number of units in the offering;
- (c) a statement summarizing in one place the significant terms of any encumbrances, easements, liens, severed interests, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes or special assessments which affect the subdivided lands;
- (d) a statement of the use for which the property is offered;
- (e) information concerning:
 - (i) any improvements, including streets, curbs, and gutters, sidewalks, water supply including a supply of culinary water, drainage and flood control systems, irrigation systems, sewage disposal facilities, and customary utilities;
 - (ii) the estimated cost to the purchaser, the estimated date of completion, and the responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition; and
 - (iii) if for any reason any of the improvements described in Subsections (i) and (ii) cannot presently be constructed or maintained, a statement clearly setting forth this fact and giving the reasons therefor;
- (f) (i) a statement of existing zoning or other planned land use designation of each unit and the proposed use of each unit in the subdivision including uses as residential dwellings, agriculture, churches, schools, low density apartments, high density apartments and hotels, and a subdivision map showing the proposed use, the zoning, or other planned land use designation, unless each unit has the same proposed use, zoning, or other planned land use designation;
- (ii) if the subdivision consists of more than one tract or other smaller division, the information and map required by Subsection (i) need only pertain to the tract or smaller division in which the units offered for disposition are located;
- (g) a map, which need not be drawn to scale, enabling one unfamiliar with the area in which the subdivision is located to reach the subdivision by road or other thoroughfare from a nearby town or city;
- (h) (i) the boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

- (ii) the location of existing underground and utility facilities; and
 - (iii) any conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of record, and utility facilities within the subdivision; and
 - (i) any additional information the division may require to assure full and fair disclosure to prospective purchasers.
- (3) (a) The public offering statement may not be used for any promotional purposes either before registration of the subdivided lands or before the date the statement becomes effective.
- (b) The statement may be used after it becomes effective only if it is used in its entirety.
- (c) A person may not advertise or represent that the division approves or recommends the subdivided lands or their disposition.
- (d) No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier, or different color type than the remainder of the statement, unless the division requires it.
- (4) (a) The division may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.
- (b) A change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without notifying and receiving approval of the division and without making appropriate amendment of the public offering statement.
- (c) A public offering statement is not current unless:
- (i) all amendments are incorporated;
 - (ii) the subdivider has timely filed each renewal report required by Section 57-11-10; and
 - (iii) no cease and desist order issued pursuant to this chapter is in effect.
- (5) The subdivider must notify the division within five working days if he is convicted of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.
- (6) The subdivider must notify the division within five working days if the person which owns the subdivided lands files a petition in bankruptcy or if any other event occurs which may have a material adverse effect on the subdivision.

57-11-8. Examination by division on application for registration.

Upon receipt of an application for registration in proper form, the division shall immediately initiate an examination to determine whether:

- (1) the requirements of Sections 57-11-6 and 57-11-7 have been satisfied;
- (2) the subdivider has not, or if a corporation or partnership, its officers, directors, general partners, or persons occupying a similar status or performing similar functions, or other principals as defined by the rules of the division have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order entered within the past ten years restraining a false or misleading promotional plan involving land dispositions; and
- (3) the public offering statement requirements of this chapter have been satisfied.

57-11-9. Notice of filing of application for registration -- Division orders of registration or rejection.

- (1) (a) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant within five business days of the date of receipt of application.
(b) Within 30 days from the date of the notice of filing, or, if no notice of filing is issued within the time required, within 35 days from the date of receipt of the application, the division shall register the subdivided lands or reject the registration.
(c) If the division has not entered the rejection within 30 days from the date of notice of filing, the land is considered registered unless the applicant has consented in writing to a delay.
- (2) (a) After inquiry and examination, if the division affirmatively determines that the requirements of Subsection 57-11-8 (1) have been met, it shall register the subdivided lands and shall designate the form of the public offering statement.
(b) The division may provide that the public offering statement is not effective until evidence is obtained and made part of the public offering statement that demonstrates that all permits or approvals necessary for the subdivided lands to be put to the use for which they are offered have been granted.
- (3) (a) After inquiry and examination, if the division determines that any of the requirements of Subsection 57-11-8 (1) have not been met, it shall notify the applicant that the application for registration, the promotional plan, or the plan of disposition must be corrected within 15 days or within the time allowed by the division.
(b) If the requirements are not met within the time allowed, the division shall enter an order rejecting the registration, giving the reasons for the rejection.
(c) Rejection of the registration is not effective for 20 days, during which time the applicant may request a hearing.

57-11-10. Renewal report -- Renewal fee -- Examination by division -- Annual reports.

- (1) (a) Within 30 days after each annual anniversary date of the division's registration of subdivided lands, the subdivider shall file a renewal report in the form prescribed by the division together with a renewal fee of \$200.
(b) The report shall reflect any material changes in information contained in the original application for registration, including any change in ownership of the subdivider.
(c) The report shall also indicate the number of units in the subdivision that have been disposed of since the division registered the subdivided lands.
- (2) (a) The division may, upon the filing of a renewal report, initiate a renewal examination of the kind described in Section 57-11-8.
(b) If the division determines upon inquiry and examination that any of the requirements of Section 57-11-8 have not been met, it shall notify the subdivider that the report, the promotional plan, or the plan of disposition must be corrected within 20 days or any additional time allowed by the division.
(c) If the requirements are not met within the time allowed, the division may, notwithstanding the provisions of Section 57-11-13 and without further notice, issue a cease and desist order according to the emergency procedures of Title 63, Chapter 46b, Administrative Procedures Act, barring further sale of the subdivided lands.
- (3) The division may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

57-11-11. Rules of division -- Filing advertising material -- Injunctions -- Intervention by division in suits -- General powers of division.

- (1) The division shall prescribe reasonable rules which shall be adopted, amended, or repealed only after a public hearing with notice thereof published once in a newspaper or newspapers with statewide circulation and sent to any nonprofit organization which files a written request for notice with the division; said notice shall be published and sent not less than 20 days prior to the hearing. The rules shall include but need not be limited to:
 - (a) provisions for advertising standards to assure full and fair disclosure;
 - (b) provisions for escrow or trust agreements, performance bonds, or other means reasonably necessary to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for. These provisions, however, shall not be required if the city or county in which the subdivision is located requires similar means of assurance of a nature and in an amount no less adequate than is required under said rules;
 - (c) provisions for operating procedures;
 - (d) provisions for a shortened form of registration in cases where the division determines that the purposes of this act do not require a subdivision to be registered pursuant to an application containing all the information required by Section 57-11-6 or do not require that the public offering statement contain all the information required by Section 57-11-7; and
 - (e) other rules necessary and proper to accomplish the purpose of this act.

(2) The division by rule or order, after reasonable notice, may require the filing of advertising material relating to subdivided lands prior to its distribution, provided that the division must approve or reject any advertising material within 15 days from the receipt thereof or the material shall be considered approved.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the district court of the district where said person maintains his residence or a place of business or where said act or practice has occurred or is about to occur, to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The division shall not be required to post a bond in any court proceedings.

(4) The division shall be allowed to intervene in a suit involving subdivided lands, either as a party or as an amicus curiae, where it appears that the interpretation or constitutionality of any provision of law will be called into question. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings. Failure to do so may, in the discretion of the division, constitute grounds for the division withholding any approval required by this act.

(5) The division may:

- (a) accept registrations filed in other states or with the federal government;
- (b) contract with public agencies or qualified private persons in this state or other jurisdictions to perform investigative functions;
- (c) accept grants-in-aid from any source.

(6) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

57-11-12. Investigatory powers and proceedings of division.

(1) The division may:

- (a) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;
- (b) require or permit any person to file a complaint in the form required by the division as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the division or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon

request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to any district court for an order compelling compliance.

57-11-13. Enforcement powers of division -- Cease and desist orders.

(1) (a) If the director has reason to believe that any person has been or is engaging in conduct violating this chapter, or has violated any lawful order or rule of the division, he shall issue and serve upon the person a cease and desist order and may also order the person to take such affirmative actions the director determines will carry out the purposes of this chapter.

(b) The person served may request an adjudicative proceeding within ten days after receiving the order.

(c) The cease and desist order remains in effect pending the hearing.

(d) The division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, if the person served requests a hearing.

(2) (a) After the hearing the director may issue an order making the cease and desist order permanent if the director finds there has been a violation of this chapter.

(b) If no hearing is requested and the person served does not obey the director's order, the director shall file suit in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter. The action shall be filed in the district court in the county in which the conduct occurred or where the person resides or carries on business.

(3) The remedies and action provided in this section may not interfere with or prevent the prosecution of any other remedies or actions including criminal prosecutions.

57-11-14. Revocation, suspension, or denial of registration -- Grounds -- Suspension or revocation of real estate license.

(1) (a) The division may deny an application for registration or may revoke, suspend, or deny reissuance of a registration, or may impose a fine of not more than \$500 per violation, by following the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, and by making a written finding of fact that the subdivider has:

(i) failed to comply with the terms of a cease and desist order;

(ii) been convicted in any court prior or subsequent to the filing of the application

- for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions, and that the public interest requires revocation;
- (iii) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (iv) failed to perform faithfully any stipulation or agreement made with the division as an inducement to grant any registration, to reinstate any registration, to revoke any cease and desist order, or to approve any promotional plan or public offering statement;
- (v) made intentional misrepresentations, or concealed material facts, in an application for registration;
- (vi) violated any provision of this chapter or the rules adopted under this chapter;
- (vii) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (viii) engaged in the offering of subdivided lands which has constituted or which may constitute a fraud upon purchasers or prospective purchasers of the lands; or
- (ix) engaged in dishonest practices in any industry involving sales to consumers.
- (b) Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) As an alternative to revoking the registration of a subdivider, the director may issue a cease and desist order if after notice and a hearing he finds that the subdivider is guilty of a violation for which revocation may be ordered.

(3) Any real estate broker or salesman violating any provisions of this chapter shall have his license suspended or revoked by the division for the period of time the director determines to be justified under the circumstances. The suspension or revocation shall be in addition to any other penalty which may be imposed under this chapter, subject to the provisions of Section 61-2-12.

57-11-15. Judicial review.

- (1) Any person aggrieved by any order of the division may obtain judicial review.
- (2) (a) Venue for judicial review of informal adjudicative proceedings is in the district court where the aggrieved person maintains his principal place of business, if situated within this state, or otherwise in the Third Judicial District.
- (b) Judicial review of informal adjudicative proceedings shall be conducted by the court without a jury.

57-11-16. Violations -- Criminal penalty -- Limitation -- Duties of attorney general, county attorney, or district attorney.

(1) Any person who willfully violates any provision of this act or of a rule adopted under it or any person who willfully, in an application for registration under this act or under the federal act, makes any untrue statement of a material fact or omits to state a material fact may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than \$50,000; or he may be imprisoned for not more than two years; or both. No indictment or information may be returned or complaint filed under this act more than five years after the alleged violation.

(2) The attorney general shall advise the division and its staff in matters requiring legal counsel or services in the exercise of the division's power or performance of its duties. In the prosecution or defense of any action under this section, the attorney general, the county attorney, or the district attorney of the appropriate county shall perform all necessary legal services without compensation other than their regular salaries.

57-11-17. Violations -- Civil remedies.

(1) Any person who:

- (a) disposes of subdivided lands in violation of Section 57-11-5:
- (b) in disposing of subdivided lands, makes an untrue statement of a material fact; or
- (c) in disposing of subdivided lands, omits a material fact required to be stated in a registration statement, public offering statement, statement of record or public report, necessary to make the statements made not misleading; is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission.

(2) In addition to any other remedies, the purchaser, under Subsection (1) may recover the consideration paid for the unit together with interest at the rate of 7% per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the unit, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 7% per year on that amount from the date of disposition.

(3) Every person who directly or indirectly controls a subdivider liable under Subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not

have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(4) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration, public offering statement, statement of record or public report, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(5) A tender of reconveyance may be made at any time before the entry of judgment.

(6) A person may not recover under this section in actions commenced more than four years after his first payment of money to the subdivider in the contested action.

(7) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this act or any rule or order under it is void.

57-11-18. Dispositions subject to chapter -- Jurisdiction of district courts.

Dispositions of subdivided lands are subject to this act, and the district courts of this state have jurisdiction in claims or causes of action arising under this act, if:

(1) The subdivided lands offered for disposition are located in this state;

(2) The subdivider's principal office is located in this state; or

(3) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

57-11-19. Extradition proceedings against person charged with crime.

In the proceedings for extradition of a person charged with a crime under this act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

57-11-20. Service of process.

(1) In addition to the methods of service provided for in the Utah Rules of Civil Procedure, service may be made by delivering a copy of the process to the office of the division, but it is not effective unless the plaintiff, which may be the division in a proceeding instituted by it:

- (a) forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address; and
- (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the division to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in Subsection (1).

57-11-21. Uniformity of construction.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

TITLE 57, CHAPTER 19
TIMESHARE AND CAMP RESORT ACT

57-19-1. Short title.

This chapter is known and may be cited as the "Timeshare and Camp Resort Act."

57-19-2. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Accommodations" includes hotel or motel rooms, condominium or cooperative units, cabins, lodges, apartments, and private or commercial structures designed for occupancy by one or more individuals.
- (2) "Advertisement" means a written, printed, audio, or visual offer made by general solicitation.
- (3) "Camp resort" means any enterprise that has as its primary purpose the offering of a camp resort interest.
- (4) "Camp resort interest" means the right to use and occupy a camping site.
- (5) "Camping site" means a space designed or promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based portable housing.
- (6) "Developer" means a person who establishes, promotes, owns, or operates a timeshare development or camp resort.
- (7) "Director" means the director of the division.
- (8) "Division" means the Division of Real Estate of the Department of Commerce.
- (9) "Executive director" means the executive director of the Department of Commerce.
- (10) "Interest" means a camp resort interest or a timeshare interest.
- (11) "Offer" means a solicitation intended to result in a person purchasing an interest in a project.
- (12) "Project" means a camp resort or timeshare development.
- (13) "Purchaser" means a person who purchases an interest in a project.

(14) "Sale" or "sell" means selling an interest in a project for value. It does not include charging a reasonable fee to offset the administrative costs of transferring an interest in a project.

(15) "Salesperson" means an individual who, for compensation and as agent for another, is engaged in obtaining commitments of persons to purchase an interest in a project by making direct sales presentations to those persons. It does not include purchasers or members engaged in the referral of persons without making a direct sales presentation to them.

(16) "Timeshare development" means any enterprise that has as its primary purpose the offering of a timeshare interest.

(17) "Timeshare interest" means a right to occupy accommodations during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land. It includes what is commonly known as a "timeshare estate," which is a small undivided fractional fee interest in real property by which the purchaser does not receive any right to use accommodations except as provided by contract, declaration, or other instrument defining a legal right.

57-19-3. Rules.

The director may make, amend, and repeal rules, forms, and orders when necessary to carry out the provisions of this chapter.

57-19-4. Unregistered sales prohibited.

Except for transactions exempt under Section 57-19-26, it is unlawful for any person to offer or sell in this state an interest in a project unless the project is registered under this chapter.

57-19-5. Registration -- Filing application.

(1) A person may apply for registration of a project by filing with the director:

- (a) an application in the form prescribed by the director;
- (b) the written disclosure required to be furnished to prospective purchasers by Section 57-19-11; and
- (c) financial statements and other information that the director may by rule require as being reasonably necessary to determine whether the requirements of this chapter have been met and whether any of the events specified in Subsection 57-19-13 (1)(g) have occurred.

(2) Interests in a project which are encumbered by liens, mortgages, or other encumbrances may not be accepted for registration or offered for disposition to the public unless:

- (a) adequate release or nondisturbance clauses are contained in the encumbering instruments to reasonably assure that the purchaser's interest in the project will not be defeated; or
- (b) the division has accepted other equivalent assurances which, in the opinion of the

division, meet the purposes of this subsection.

- (3) Each application for registration of a project shall be accompanied by:
 - (a) a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for each interest over 100, up to a maximum of \$2,500 for each application; and
 - (b) a deposit of \$300 to cover all on-site inspection costs and expenses incurred by the division. If the \$300 deposit is insufficient to meet the estimated costs and expenses of the on-site inspection, the applicant shall make an additional deposit sufficient to cover the estimated costs and expenses before the division will inspect the subdivided lands. The deposit shall be refunded to the extent it is not used, together with an itemized statement from the division of all amounts it has used.
- (4) If a person registers additional interests to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering interests for disposition in the same project by filing an application for consolidation accompanied by an additional fee of \$200 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application, if at the time the person makes the application all of the information required by Subsection (1) has been brought current and covers the additional interests.

57-19-6. Effective date of application.

- (1) An application for registration filed pursuant to Section 57-19-5 is effective upon the expiration of 30 business days following its filing with the director, unless:
 - (a) an order denying the application pursuant to Section 57-19-13 is in effect;
 - (b) a prior effective date has been ordered by the director; or
 - (c) the director has, prior to that date, notified the applicant of a defect in the registration application.
- (2) An applicant may consent to the delay of effectiveness until the director by order declares the registration to be effective.
- (3) Notwithstanding Section 57-19-4, the division may grant a temporary permit allowing the developer to begin a sales program while the registration is in process. To obtain a temporary permit, the developer shall:
 - (a) submit an application to the division for a temporary permit in the form required by the division;
 - (b) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary permit fee of \$100;
 - (c) provide evidence acceptable to the division that all funds received by the developer or marketing agent will be placed into an independent escrow with instructions that funds will not be released until a final registration has been granted;
 - (d) give to each purchaser and potential purchaser a copy of the proposed property report that the developer has submitted to the division with the initial application; and

(e) give to each purchaser the opportunity to cancel the purchase in accordance with Section 57-19-12. The purchaser shall have an additional opportunity to cancel upon the issuance of an approved registration if the division determines that there is a substantial difference in the disclosures contained in the final property report and those given to the purchaser in the proposed property report.

57-19-7. Prior permits.

Any permit to market a project issued by the division prior to April 27, 1987, is considered to be an effective registration, but is subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit.

57-19-8. Filing proposed documents.

(1) Every developer shall file with the director at least five business days prior to using any of the following in this state:

- (a) copies or the proposed text of all advertisements and sales promotion literature;
- (b) the proposed form of its sales contracts; and
- (c) copies or the text of any supplements to the written disclosure required to be furnished to prospective purchasers pursuant to Section 57-19-11.

(2) If the text, rather than copies, of the materials specified in Subsection (1) are filed, copies of these materials shall be filed with the director within five business days following the date the materials are first used.

(3) The developer shall notify the division within five working days if he is convicted in any court of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.

(4) The developer must notify the division within five working days if the developer files a petition in bankruptcy or if any other event occurs which may have a material adverse effect on the subdivision.

(5) In any suit by or against the developer involving camp resorts or timeshare developments, the developer promptly shall furnish the division notice of the suit and copies of all pleadings. Failure to provide notice may, in the discretion of the division, constitute grounds for the division withholding any approval required by this act.

57-19-9. Duration of registration -- Amendment and renewal -- Supplemental disclosure -- Notice of amendment.

- (1) Registration of a project is effective for a period of one year and may, upon application, be renewed for successive periods of one year each.
- (2) A registration may be amended at any time, for any reason, by filing an amended application for registration, which amended registration shall become effective in the manner provided in Section 57-19-6.
- (3) The written disclosure required to be furnished to prospective purchasers pursuant to Section 57-19-11 shall be supplemented as often as is necessary to keep the required information reasonably current. These supplements shall be filed with the director as provided in Section 57-19-8.
- (4) Every developer shall provide timely notice sent to the director of any event which has occurred which may have a material adverse effect on the conduct of the operation of the project. In addition to this notification, the developer shall, within 30 days of the occurrence of that event, file an amendment to the registration disclosing the information previously provided.
- (5) Each application for renewal of a registration and each supplementary filing as provided in this section shall be accompanied by a fee of \$200.

57-19-10. Effect of application or registration -- Misleading statements to prospective purchasers a misdemeanor.

Neither the fact that an application for registration or the written disclosures required by this chapter have been filed, nor the fact that a project has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does either of these facts mean that the director has determined in any way the merits or qualifications of, or recommended or given approval to, any person, developer, or transaction involving an interest in a project. It is a class A misdemeanor to make or cause to be made to any purchaser or prospective purchaser any offering or document filed under this chapter which is untrue, incomplete, or misleading.

57-19-11. Disclosure required.

Except in a transaction exempt under Section 57-19-26, any person who sells or offers to sell an interest in a project located in this state, or who sells or offers to sell in this state an interest in a project located outside of this state, shall provide to the prospective purchaser, before the prospective purchaser signs an agreement to purchase an interest in a project or gives any item of value for the purchase of an interest in a project, a written statement which provides a full and fair disclosure of information regarding the project and the purchaser's rights and obligations associated with the purchase of an interest in a project. The written disclosure shall be on the property report form required by the division and shall include:

- (1) the name and address of the developer;

- (2) a statement whether or not the developer has ever been:
 - (a) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty; or
 - (b) enjoined from, assessed any civil penalty for, or found to have engaged in the violation of any law designed to protect consumers;
- (3) a brief description of the developer's experience in timeshare, camp resort, or any other real estate development;
- (4) a brief description of the interest which is being offered in the project;
- (5) a description of any provisions to protect the purchaser's interest from loss due to foreclosure on any underlying financial obligation of the project;
- (6) a statement of the maximum number of interests in the project to be marketed, and a commitment that this maximum number will not be exceeded unless disclosed by filing an amendment to the registration as provided in Section 57-19-9 prior to the amendment becoming effective;
- (7) any event which has occurred as of the date of the offer which may have a material adverse effect on the operation of the project; and
- (8) any other information the director considers necessary for the protection of purchasers.

57-19-12. Purchaser's right to cancel.

- (1) (a) An agreement to purchase an interest in a project may be cancelled, at the option of the purchaser, if:
 - (i) the purchaser provides to the developer, by hand delivery or certified mail, written notice of the cancellation; and
 - (ii) the notice is delivered or postmarked not later than midnight of the fifth calendar day following the day on which the agreement is signed.
- (b) In computing the number of calendar days for purposes of this section, the day on which the agreement was signed and legal holidays are not included as "calendar days."
- (c) Within 30 days after receipt of timely notice of cancellation, the developer shall refund any money or other consideration paid by the purchaser.
- (2) Every agreement to purchase an interest in a project which is subject to this chapter shall include the following statement in at least ten point bold upper-case type, immediately preceding the space for the purchaser's signature: "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELLATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED.

IN COMPUTING THE NUMBER OF CALENDAR DAYS, THE DAY ON WHICH THE CONTRACT IS SIGNED AND LEGAL HOLIDAYS ARE NOT INCLUDED."

57-19-13. Suspension, revocation, or denial of registration -- Fine.

(1) Subject to Section 57-19-17, an application for registration of a project may be denied, an existing registration may be suspended or revoked, or a fine of not more than \$500 may be imposed by the director, if he finds that:

- (a) the developer's advertising or sales techniques or trade practices have been or are deceptive, false, or misleading;
- (b) the developer has failed to file copies of its advertisements, promotion literature, or sales contract forms as required by Section 57-19-8;
- (c) the developer has failed to comply with any provision of this chapter or the rules adopted under this chapter that materially affect or would affect the rights of purchasers or prospective purchasers of an interest in a project, or that materially affect the administration of this chapter;
- (d) the developer's offering of an interest in a project has worked or would work a fraud upon purchasers or prospective purchasers of such an interest;
- (e) the developer's application or any amendment to an application is incomplete in any material respect;
- (f) the developer's application or any amendment to an application contains material misrepresentations or omissions of material fact which are necessary to make the statements contained in the application or amendment not misleading;
- (g) the developer or any officer or director of the developer has been:
 - (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;
 - (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the violation of any law designed to protect consumers; or
 - (iii) engaged in dishonest practices in any industry involving sales to consumers;
- (h) the developer has represented or is representing to purchasers in connection with the offer or sale of an interest in a project that any accommodations, related facilities, or amenities are planned, without reasonable grounds to believe that they will be completed within a reasonable time;
- (i) the developer has disposed of, concealed, or diverted any funds or assets so as to defeat the rights of purchasers; or
- (j) the developer has failed to provide to purchasers copies of the written disclosure required by Section 57-19-11.

(2) The authority to impose fines as provided in this section does not apply to Subsection (1) (e).

57-19-14. Registration of salesperson.

(1) Unless the transaction is exempt under Section 57-19-26, it is unlawful for any person to act as a salesperson marketing a project in this state without first registering under this chapter as a

salesperson.

(2) The fee for registration as a salesperson is waived by the division for persons licensed by the division under Title 61, Chapter 2.

57-19-15. Application for registration of salesperson.

(1) A person may apply for registration as a salesperson under this chapter by filing with the director an application in the form prescribed by the director, including, but not limited to:

- (a) a statement whether or not the applicant has ever been:
 - (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty; or
 - (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the violation of any law designed to protect consumers;
- (b) a statement describing the applicant's employment history for the previous five years and whether or not any termination of employment during that period was occasioned by any theft, fraud, or act of dishonesty; and
- (c) any other information that the director, by rule, considers necessary to protect the interests of purchasers.

(2) The application shall be accompanied by a fee of \$50.

(3) Registration as a salesperson is effective for a period for one year, unless the director specifies otherwise. Registration as a salesperson may be renewed by the filing of a form prescribed by the director for that purpose and the payment of a renewal fee of \$50.

57-19-16. Denial, revocation, or suspension of registration of salesperson -- Fine.

Subject to Section 57-19-17, an application for registration as a salesperson may be denied, an existing registration may be revoked or suspended, or a fine not to exceed \$500 may be imposed by the director, if he finds that the applicant or salesperson has:

- (1) filed, or caused to be filed, with the director any document which contains any untrue or misleading information;
- (2) made any untrue or misleading statement of material fact, or failed to state a material fact which is necessary in order to make the statements made not misleading in light of the circumstances under which they are made;
- (3) employed any device, scheme, or artifice to defraud, or engaged in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
- (4) subsequent to the effective date of registration as a salesperson, has been:
 - (a) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty; or

(b) enjoined from, assessed a civil penalty for, or found to have engaged in any violation of any law designed to protect consumers;

(5) violated any provision of this chapter; or

(6) engaged in any activity which constitutes dishonest dealing.

57-19-17. Administrative procedures.

(1) The director may summarily deny an application for registration under any of the provisions of Section 57-19-13 or 57-19-16. If a registration is denied, the applicant may, within ten days after receipt of notice of the denial, request a hearing before an administrative law judge. The director shall schedule the hearing within 30 days after receipt of the applicant's request and give notice of the hearing in writing to the applicant, specifying the reasons for denial of the registration. If, as a result of the hearing, it is determined that the applicant is qualified to be registered, the registration shall be issued.

(2) Before an existing registration is suspended or revoked, or a fine imposed, the director shall schedule a hearing before an administrative law judge and give notice in writing to the affected person as prescribed in Title 13, Chapter 1, and the rules of procedure for hearings before the Department of Commerce. If, as a result of the hearing, the administrative law judge finds that there has been a violation of this chapter, the registration shall be suspended or revoked, or a fine imposed, by written order of the director in concurrence with the executive director.

(3) The developer or salesperson has the right to appear at the hearing, in person or by counsel, to be heard and to examine witnesses appearing in connection with the complaint. At the hearing, all witnesses shall be sworn by the administrative law judge, and stenographic notes or a tape recording of the proceeding shall be taken and filed as a part of the record in the case. Any party to the proceeding shall be furnished a copy of the stenographic notes or tape recording at a reasonable cost. The administrative law judge shall render a decision within 60 days after the completion of the hearing. The executive director and the director shall concurrently make the final decision and promptly notify the parties to the proceedings, in writing, of the ruling, order, or decision.

(4) The developer or salesperson, or any person aggrieved, may appeal any adverse ruling, order, or decision of the executive director and the director to the district court for the county in which the hearing was held, within 30 days from the date of service of notice of the ruling, order, or decision upon him. At the time of filing the notice of appeal, the appellant shall file with the notice a bond for costs on appeal in the amount of \$200, conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed.

57-19-18. Investigation -- Publication.

(1) The director may make any investigations or requests for information, within or outside of

this state, that he considers necessary:

- (a) to determine whether any registration under this chapter should be granted, denied, or revoked;
- (b) to determine whether any person has violated or is about to violate any of the provisions of this chapter or any rule or order under this chapter; or
- (c) to aid in the enforcement of this chapter.

(2) The director may publish information concerning any violation of this chapter or any rule or order under this chapter.

57-19-19. Subpoenas -- Evidence.

(1) For the purposes of any investigation or proceeding under this chapter, the director, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant or material to the inquiry.

(2) A person who disobeys any subpoena lawfully issued by the director, or who refuses to testify to any matters regarding which he may be lawfully interrogated, is subject to the provisions of Section 78-32-15.

57-19-20. Injunctive relief -- Cease and desist order.

(1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, and that it would be in the public interest to stop those acts or practices, the director may either:

- (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or
- (b) issue an administrative cease and desist order.

(2) If an administrative cease and desist order is issued pursuant to Subsection (1), the person upon whom the order is served may, within ten days after receiving the order, request that a hearing be held before an administrative law judge. If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act. Pending the hearing, the order remains in effect.

(3) If, at the hearing, a finding is made that there has been a violation of this chapter, the director, with the concurrence of the executive director, may issue an order making the cease and desist order permanent. If no hearing is requested, and if the person fails to cease the act or practice, or after discontinuing the act or practice again commences it, the director shall file suit in the district court of the county in which the act or practice occurred, or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(4) Whether or not the director has issued a cease and desist order, the attorney general, in the

name of the state or of the director, may bring an action in any court of competent jurisdiction to enjoin any act or practice constituting a violation of any provision of this chapter, and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

57-19-21. Voidable agreements.

Any agreement to purchase an interest in a project entered into in violation of Section 57-19-4 or 57-19-14 may, at the option of the purchaser, be voided and the purchaser's entire consideration recovered together with interest at the legal rate, costs, and reasonable attorney's fees. However, no suit under this section may be brought more than two years after:

- (1) the date the agreement is signed; or
- (2) the date the purchaser knew or reasonably should have known of the violation.

57-19-22. Violation a misdemeanor.

Any person who willfully violates any provision of this chapter is guilty of a class B misdemeanor.

57-19-23. Prosecution.

The director may refer any available evidence concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may, in his discretion, with or without such a referral, institute the appropriate civil or criminal proceedings under this chapter.

57-19-24. Violation of Consumer Sales Practice Act.

For purposes of applying Title 13, Chapter 11, the Consumer Sales Practices Act, any material violation of the provisions of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

57-19-25. Remedies nonexclusive.

The remedies provided in this chapter are cumulative and nonexclusive, and do not affect any other remedy available at law.

57-19-26. Exemptions.

- (1) Unless entered into for the purpose of evading the provisions of this chapter, the following transactions are exempt from registration:
 - (a) isolated transactions by an owner of an interest in a project or by a person holding

- such an owner's executed power of attorney;
- (b) an offer or sale by a governmental entity; and
- (c) a bona fide pledge of interest in a project.

(2) The director may, by rule or order, exempt any person from any or all requirements of this chapter if the director finds that the offering of an interest in a project is essentially noncommercial. For purposes of this subsection, the offering of fewer than ten interests in a project is considered essentially noncommercial.

TITLE 25, CHAPTER 5 STATUTE OF FRAUDS

25-5-1. Estate or interest in real property.

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

25-5-2. Wills and implied trusts excepted.

Section 25-5-1 shall not be construed to affect the power of a testator in the disposition of his real estate by last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

25-5-3. Leases and contracts for interest in lands.

Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.

25-5-4. Certain agreements void unless written and signed.

(1) The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:

- (a) every agreement that by its terms is not to be performed within one year from the making of the agreement;
- (b) every promise to answer for the debt, default, or miscarriage of another;
- (c) every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry;
- (d) every special promise made by an executor or administrator to answer in damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;
- (e) every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation; and
- (f) every credit agreement.

(2) (a) As used in Subsection (1)(f) and this Subsection (2):

- (i) (A) "Credit agreement" means an agreement by a financial institution to:
 - (I) lend, delay, or otherwise modify an obligation to repay money, goods, or things in action;
 - (II) otherwise extend credit; or

- (III) make any other financial accommodation.
 - (B) "Credit agreement" does not include the usual and customary agreements related to deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.
 - (ii) "Creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor.
 - (iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a financial accommodation, under a credit agreement with a financial institution.
- (iv) "Financial institution" means:
 - (A) a state or federally chartered:
 - (I) bank;
 - (II) savings and loan association;
 - (III) savings bank;
 - (IV) industrial bank; or
 - (V) credit union; or
 - (B) any other institution under the jurisdiction of the commissioner of Financial Institutions as provided in Title 7, Financial Institutions Act.
- (b) (i) Except as provided in Subsection (2)(e), a debtor or a creditor may not maintain an action on a credit agreement unless the agreement:
 - (A) is in writing;
 - (B) expresses consideration;
 - (C) sets forth the relevant terms and conditions; and
 - (D) is signed by the party against whom enforcement of the agreement would be sought.
- (ii) For purposes of this act, a signed application constitutes a signed agreement, if the creditor does not customarily obtain an additional signed agreement from the debtor when granting the application.
- (c) The following actions do not give rise to a claim that a credit agreement is created, unless the agreement satisfies the requirements of Subsection (2)(b):
 - (i) the rendering of financial advice by a creditor to a debtor;
 - (ii) the consultation by a creditor with a debtor; or
 - (iii) the creation for any purpose between a creditor and a debtor of fiduciary or other business relationships.
- (d) Each credit agreement shall contain a clearly stated typewritten or printed provision giving notice to the debtor that the written agreement is a final expression of the agreement between the creditor and debtor and the written agreement may not be contradicted by evidence of any alleged oral agreement. The provision does not have to be on the promissory note or other evidence of indebtedness that is tied to the credit agreement.
- (e) A credit agreement is binding and enforceable without any signature by the party to be charged if:
 - (i) the debtor is provided with a written copy of the terms of the agreement;
 - (ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms; and

(iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

25-5-5. Representation as to credit of third person.

To charge a person upon a representation as to the credit of a third person, such representation, or some memorandum thereof, must be in writing subscribed by the party to be charged therewith.

25-5-6. Promise to answer for obligation of another -- When not required to be in writing.

A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

- (1) Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise, or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.
- (2) Where the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety.
- (3) Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancel the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person.
- (4) Where a factor undertakes for a commission to sell merchandise and to guarantee the sale.
- (5) When the holder of an instrument for the payment of money upon which a third person is or may become liable to him transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

25-5-7. Contracts by telegraph deemed written.

Contracts made by telegraph shall be deemed to be contracts in writing, and all communications sent by telegraph and signed by the person sending the same, or by his authority, shall be deemed to be communications in writing.

25-5-8. Right to specific performance not affected.

Nothing in this chapter contained shall be construed to abridge the powers of courts to compel the specific performance of agreements in case of part performance thereof.

25-5-9. Agent may sign for principal.

Every instrument required by the provisions of this chapter to be subscribed by any party may be subscribed by the lawful agent of such party.

TITLE 78, CHAPTER 23
SECTIONS 3 and 4
UTAH EXEMPTIONS ACT

78-23-3. Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax purposes.

- (1) For purposes of this section:
 - (a) "Household" means a group of persons related by blood or marriage living together in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and expenses.
 - (b) "Mobile home" is as defined in Section 57-16-3.
 - (c) "Primary personal residence" means a dwelling or mobile home, and the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or mobile home, in which the individual and the individual's household reside.
 - (d) "Property" means:
 - (i) a primary personal residence;
 - (ii) real property; or
 - (iii) an equitable interest in real property awarded to a person in a divorce decree by a court.
- (2)
 - (a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:
 - (i) \$5,000 in value if the property consists in whole or in part of property which is not the primary personal residence of the individual; or
 - (ii) \$20,000 in value if the property claimed is the primary personal residence of the individual.
 - (b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a homestead exemption; however
 - (i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not exceed \$10,000 per household; or
 - (ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed \$40,000 per household.
 - (c) A person may claim a homestead exemption in either or both of the following:
 - (i) one or more parcels of real property together with appurtenances and improvements; or
 - (ii) a mobile home in which the claimant resides.
- (3) A homestead is exempt from judicial lien and from levy, execution, or forced sale except for:
 - (a) statutory liens for property taxes and assessments on the property;
 - (b) security interests in the property and judicial liens for debts created for the purchase price of the property;
 - (c) judicial liens obtained on debts created by failure to provide support or maintenance for dependent children; and

- (d) consensual liens obtained on debts created by mutual contract.
- (4) (a) Except as provided in Subsection (4)(b), water rights and interests, either in the form of corporate stock or otherwise, owned by the homestead claimant are exempt from execution to the extent that those rights and interests are necessarily employed in supplying water to the homestead for domestic and irrigating purposes.
(b) Those water rights and interests are not exempt from calls or assessments and sale by the corporations issuing the stock.
- (5) (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the owner.
(b) The proceeds of any sale, to the amount of the exemption existing at the time of sale, is exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.
- (6) The sale and disposition of one homestead does not prevent the selection or purchase of another.
- (7) For purposes of any claim or action for taxes brought by the United States Internal Revenue Service, a homestead exemption claimed on real property in this state is considered to be a property right.

78-23-4. Declaration of homestead -- Filing -- Contents -- Failure to file -- Conveyance by married person -- No execution sale if bid less than exemption -- Redemption rights of judgment creditor.

An individual may select and claim a homestead by complying with the following requirements:

- (1) Filing a signed and acknowledged declaration of homestead with the recorder of the county or counties in which the homestead claimant's property is located or serving a signed and acknowledged declaration of homestead upon the sheriff or other officer conducting an execution prior to the time stated in the notice of such execution.
- (2) The declaration of homestead shall contain:
 - (a) a statement that the claimant is entitled to an exemption and if the claimant is married a statement that the claimant's spouse has not filed a declaration of homestead;
 - (b) a description of the property subject to the homestead;
 - (c) an estimate of the cash value of such property; and
 - (d) a statement specifying the amount of the homestead claimed and stating the name, age, and address of any spouse and dependents claimed to determine the value of the homestead.
- (3) If a declaration of homestead is not filed or served as provided in this section, title shall pass

to the purchaser upon execution free and clear of all homestead rights.

(4) If an individual is married, no conveyance of or security interest in, or contract to convey or create a security interest in property recorded as a homestead prior to the time of such conveyance, security interest, or contract shall be valid, unless both the husband and wife join in the execution of the conveyance, security interest, or contract.

(5) Property that includes a homestead shall not be sold at execution if there is no bid which exceeds the amount of the declared homestead exemption.

(6) If property that includes a homestead is sold under execution the sale shall be subject to redemption by the judgment debtor as provided in Rule 69(f) of the Utah Rules of Civil Procedure. If there is a deficiency the property shall not be subject to another execution to cover the deficiency.

STATE ENGINEER'S OFFICE DIVISION OF WATER RIGHTS

Historical Background

The Utah law of water rights evolved from the early irrigation practices initiated by the first Mormon pioneers who arrived in the Great Salt Lake Valley in July 1847. These pioneers were the first Anglo-Saxons in the United States to practice irrigation on a large scale. Because of the arid nature of the area, the diversion and application of water to the surrounding land for agricultural purposes made the adoption of the appropriation doctrine a necessity in order to accomplish the settlement of the area.

For the first 50 years in Utah, following the arrival of the pioneers, the appropriation of water was made by diverting the water from stream channels and applying it to beneficial use. From 1852 to 1880 the appropriator was required to bring a petition before the county court for a water privilege, which the court could either grant or reject. The appropriator had to have his petition granted prior to any development and subject to any terms imposed in the grant.

In 1880 a statute was enacted which replaced the county court's procedure with an ex officio water commissioner of the county. He had the authority to measure streamflow, to determine all claims of right to the use of water, to issue certificates on water rights to parties found to possess vested water rights, and to record certificates and to distribute the water accordingly. However, the 1880 law contained no procedure for making new appropriations. Therefore, in order to appropriate water you just had only to divert and apply the water to beneficial use and thereby establish your right.

Utah was admitted to the Union as a State on January 4, 1896. The Utah Constitution recognized and confirmed all existing rights to the use of water for any useful and beneficial purpose. The Legislature subsequently declared all water to the State, whether above or under the ground, to be the property of the public, and that beneficial use shall be the basis, the measure, and the limit of all rights to the use of water in this State.

In 1897 the Legislature enacted a specific statutory procedure for the future appropriations of water in Utah which provided for posting of notices, filing them with the county recorder, and commencing and prosecuting the work to completion with reasonable diligence. If the appropriator met all statutory requirements in initiating and consummating his appropriation, the priority related back to the date of the posting notice. However, with the Act of 1897, few appropriators posted notice or filed them with the county recorder, thus making the law useless. Also in 1897, the State Engineer's Office was created, but it had only limited responsibility--mainly in the area of water measurements and distribution.

In 1903 the present method of appropriating water was adopted by the Legislature. Since that time the Legislature has made minor revisions to the water law. The 1903 Act provided that an appropriation could only be acquired through filing an application with the State Engineer.

Due to the development of problems in the use of groundwater, and since the 1903 Act only applied to surface water, in 1935 the Utah Legislature provided that rights to appropriate groundwater could only be acquired by filing an application with the State Engineer. Since that date both surface and groundwater applications are handled in the same manner.

Upon receipt of an application, the State Engineer causes notice to be published in the county where the point of diversion is located. Protests against the application may be submitted within 30 days following the last publication date. If a protest is filed, the application is set for hearing by the State Engineer.

Before approving an application, the State Engineer must find that: (1) there is unappropriated water in the proposed sources; (2) the proposed use will not impair existing rights or interfere with the more beneficial use of the water; (3) the proposed plan is physically and economically feasible; and, (4) the applicant has the financial ability to complete the proposed works, and the application was filed in good faith and not for purposes of speculation or monopoly. The State Engineer may reject an application if he determines it will interfere with the more beneficial use of water for other purposes or will prove detrimental to the public welfare or the natural stream environment.

Once an application is approved, the applicant is given a specific time within which to place the water to beneficial use and submit written proof of appropriation. After the water is placed to beneficial use and the applicant submits proof, the State Engineer issues a certificate of appropriation which is recorded in the county recorder's office.

The Utah statute allows changes in the point of diversion, place of use, and nature of use of appropriated water. To accomplish such a change, the water user must file a change application with the State Engineer and receive his approval. The approval or rejection of a change application depends on whether or not the proposed change will impair other vested rights.

There have been two recent, and perhaps very important, additions to the Utah water law. The first grants the State Engineer the responsibility to control geothermal development in the State. The second grants the State Engineer the authority to grant applications to appropriate for industrial purposes (energy development) for a fixed period of time. This fulfills the purpose of the original appropriation, and at the end of which time the water reverts back to the State for allocation to other uses.

Besides the duties stated above, the State Engineer is to assure proper distribution of existing water rights. Also, in Utah there is a statutory procedure for the adjudication of existing rights to a stream or other source, including groundwater. Once such an action is initiated, it is the State Engineer's responsibility to investigate the claims to water made by the individual water users, to prepare a hydrographic survey of the area involved, and to assemble the information gathered into a proposed determination of water rights for submission to the court and the individual water users. Any person aggrieved by a decision of the State Engineer may, within 30 days after notice of the decision, bring a civil action in the district court for plenary review thereof.

Available Water Rights Information

In Utah, the Division of Water Rights (the State Engineer's Office) is the office of record for water rights, and a central records and file section is maintained which is public record. The State has been divided into 47 hydrologic basins or subbasins, and the water rights are filed in the central files, numerically, within the hydrologic basin where they are located.

The water rights on file show, generally, the following basic information: the applicant's name and address, the source of water, the flow of C.F.S. or the quantity in acre-feet, the point of diversion and diverting works, a description of the use or uses, the place of use, the period of use, the priority date of the right, and the status of the right. The water rights are contained on several different types of forms, but all show the above basic information.

The Division has an extensive data base, and water rights can be identified if the file number, the applicant's name, and/or the location of the water right is known. Thus it is possible to identify the water rights in a specific or general area, and also to identify those water rights owned by a certain party.

Water rights evidenced by decrees, certificates of appropriation, diligence claims, underground water claims, or by water user's claims filed in a general adjudication proceeding shall be transferred by deed in the same manner as real estate inasmuch as they are considered to be real property. When water rights are represented by shares of stock in a corporation they are considered to be personal property and are not appurtenant to the land. A certified copy of such deed or other instrument transferring title of water rights shall be promptly transmitted to the State Engineer for filing.

There were many decrees entered by the courts during the early 1900's which define water rights on several river systems in Utah. Copies of the court decrees are on record with the Division of Water Rights. Many of these rights originated prior to the Act of 1903, which Act made it mandatory to file with the State Engineer; however, as long as the water user continues to make beneficial use of the water, he is able to maintain a use right with the priority date of when the water was first put to use.

As noted earlier, the State Engineer prepares a Proposed Determination of Water Rights for a given hydrologic area for submission to the court in an adjudication proceeding. The proposed determinations are in booklet form, and contain basic information of the water rights in the area. There are approximately 130 completed, partially completed, or proposed determinations, and these are available to the public. Proposed determinations contain alphabetical, numerical and source indexes, in addition to the completed description of the water rights of the water users in the area. In conjunction with a proposed determination, hydrographic survey maps are compiled, showing the points of diversion and irrigated acreages of the various water rights. In areas where a proposed determination has been prepared, the decreed rights mentioned earlier, and also any other diligence rights for which a claim has not been filed, are identified, given a file number, and become part of

the proposed determination and central records.

Other information available from the State Engineer's Office concerning water right information includes water well logs and water distribution reports. Well drillers in the State of Utah are required to be licensed with the Division of Water Rights and are required to file a well log of all water wells drilled. These well logs are kept on the water right file which covers the well drilled, and they are also filed according to the section, township, and range in which the well is located.

To insure that existing water rights are distributed properly, the State Engineer has appointed water commissioners on several rivers and underground sources in the State. These commissioners make measurements of water diverted to each water user in accordance with established rights and submit reports annually to the State Engineer. The commissioners' reports are available for inspection at the Division of Water Rights.

6/3/99